

Policy and Procedure for Limiting the Use/Disclosure of and Requests for Protected Health Information to the Minimum Necessary

45 CFR 164.502(b)

PURPOSE: To establish the policy and procedure for limiting to the minimum necessary: (1) the use or disclosure of protected health information (PHI); and (2) PHI requested by IHS from other health care providers and health plans.

POLICY: The health record shall be maintained confidentially and shall not be disclosed except as provided by the Privacy Act of 1974 (5 U.S.C. 552a), the Health Insurance Portability & Accountability Act (HIPAA) Privacy Rule (45 C.F.R. 164), the Freedom of Information Act (5 U.S.C. 552) and other relevant HHS and IHS regulations and guidance.

IHS must make reasonable efforts to limit the use and disclosure of and requests for PHI to the minimum necessary in order to accomplish the intended purpose of the use, disclosure, or request, except to the subject patient, or pursuant to a valid authorization.

The “minimum necessary” requirement does not apply to:

- Disclosures to or requests by a healthcare provider for treatment purposes;
- Disclosures to the patient
- Uses or disclosures made pursuant to a valid authorization, (IHS-810) signed by the patient or personal representative, so long as the use or disclosure is consistent with the authorization;
- Uses or disclosures that are required by statutes and regulations (unless prohibited by the Privacy Act);
- Uses or disclosures required for compliance with standard HIPAA transactions or other HIPAA Administrative Simplification regulations;
- Disclosures to the Secretary, Department of Health and Human Services, required under HIPAA for enforcement purposes.

PROCEDURE:

1. The Service Unit Director/Chief Executive Officer (SUD/CEO) or Service Unit HIPAA Coordinator shall identify, in writing, individual staff or classes of staff who have a need to know for access to PHI in order to perform their official duties.¹
2. The SUD/CEO or Service Unit HIPAA Coordinator shall identify, in writing, the category or categories of PHI for each staff person or class of staff who have a need to know for access, and any conditions appropriate for such access.
3. Although IHS retains the right to make its own minimum necessary determination for disclosures, IHS may rely on the judgment of the party requesting the disclosure as to the minimum amount of information needed, when the request is reasonable and made by:

¹ For Areas that provide CHS directly through the Area Office, references to the SUD/CEO should be considered references to the Area Director’s designee, as applicable.

- A public official for a disclosure permitted under 45 CFR 164.512 (Uses and disclosures for which an authorization or opportunity to agree or object is not required), if such official represents that the information requested is the minimum necessary for the stated purpose;
 - Another covered health care provider, health plan, or health care clearinghouse.
 - A professional who is an employee or contractor (business associate) of IHS, for the purpose of providing professional services to IHS, if the professional represents that the information requested is the minimum necessary for the stated purpose; or
 - A researcher with appropriate documentation from an Institutional Review Board or Privacy Board.
4. When requesting PHI from other covered entities, IHS must limit any such request to that which is reasonably necessary to accomplish the purpose for which IHS is making the request.
 5. For requests made on a routine and recurring basis (for example, CHS referrals), IHS must limit the PHI requested to the amount reasonably necessary to accomplish the purpose for which the request is made.
 6. All other requests must be reviewed on an individual basis to determine that the PHI sought is limited to the information reasonably necessary to accomplish the purpose for which the request is made.
 7. The entire medical record shall only be disclosed when specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.
 8. The responsible IHS staff person, as designated by the SUD/CEO shall monitor compliance with the “minimum necessary”.